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CHRISTINE O. GREGOIRE
Governor

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR
P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • TTY/TDD (360) 753-6466

TESTIMONY OF GOVERNOR CHRIS GREGOIRE
BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
NOVEMBER 9, 2007
SEATTLE, WASHINGTON

I'm Chris Gregoire, Governor of the State of Washington. Thank you for coming to my state on this important topic.

Today, I urge you to take a broad public-interest view of the issues you are considering. These regulatory decisions are not solely matters of business interest. I fervently believe the airwaves are public property. Owners who use them have a strong obligation to the rest of us to maintain that use in the public interest.

You last looked at this issue in 2002, and I wrote you, as Attorney General, with my deep concerns about the FCC's efforts to accelerate the already rapid trend toward consolidation in the media. Those concerns are no less on my mind today. As Governor, I continue to be opposed to further concentration of media ownership through consolidation of the media. Such concentration stifles creativity and content. It narrows perspectives available to each of us as citizens, and it is unhealthy in a society that rests on principles of equality and diversity. I find it ironic that in an age with so many new ways for people to communicate – and so many ways to exercise the beauty of Democracy – we face the very real threat that these new ways will be controlled by a few.

Since 1995, there are 40 percent fewer TV-station owners due to consolidation. Three media companies own all of our cable news networks, and two companies serve 40 percent of households getting cable TV. Just one company now owns nearly 1,200 radio stations across the country. Before 1996, no company could own more than 40 stations nationwide.

And I'm not just talking about newspapers, TV stations, and radio stations. Ownership of what we can hear, view and say is concentrating in key chokepoints such as Internet content and phone transmissions. A handful of companies now dominate the top Internet news sites.

We need competition, not concentration. We need diversity, vitality, and local perspectives. Democracy depends on a thriving market place of ideas. It depends on a healthy menu of political discourse, culture, and arts. Do we really want to concentrate control of this market place into the hands of a few? I can tell you, I don't, and I don't believe Washingtonians do either.

What happens if a single owner doesn't like what is being said on TV or through the newspaper or Internet? Will this owner engage in censorship? That's the problem. The possibility of censorship makes people lose confidence that their voices will be heard. We already have a problem with distrust in far too many of our major institutions in this country – we don't need media added to the list simply through consolidation.

If our means of communication is controlled by a few, what's to stop them from blocking our artists, musicians, grass-roots political organizations, and others from the doorways needed to reach their audiences? How will the next great author get published? How will the next great band be able to leave a garage in West Seattle for a worldwide audience? How will photos, or video, documenting injustice be seen widely enough to spark a response?

This is a problem, both real and perceived. Concentration of media ownership – in all its evolving forms – is a real problem. It's a problem for me, and for Washingtonians, who live and work in creative, expressive and innovative communities from Spokane to Seattle, and Vancouver to Bellingham.

I ask you to ensure that our citizens have access to multiple sources of information and perspectives. Thank you.

Good evening, I'm Pam Pearson, vice president and general manager of KCPQ channel 13 and KMYQ TV channel 22 —Tribune Broadcasting's duopoly in Seattle. I have been with the stations for eight years and at the company for 22. I began my career in creative services and programming in Atlanta at Turner Broadcasting's Superstation TBS, about the time the company launched CNN --- what was then referred to as "Chicken Noodle News."

I have seen tremendous changes in our industry, as competition and technology have given our audience so many more choices. But one thing has not changed. Even as our competitors in cable and satellite television compete with us for local advertising and finance their program offerings with ever-increasing subscriber fees, over-the-air broadcasters have retained our unwavering commitment to our local communities.

When I came to Seattle in 1999, KCPQ had just begun a half-hour local newscast at 10 p.m. Since then, we have grown our newsroom, and now broadcast news five hours a day — we are the only station in Seattle-Tacoma to present a full hour of news in prime time and four hours of live local news in the morning. Having a duopoly means that when network entertainment or sports programming runs past 10 o'clock, we can shift the newscast to KMYQ, our second station, so our viewers can always depend on us for local news at 10pm.

We have invested in the latest weather technology -- a Doppler radar system located on the coast that is able to see weather 24 hours ahead. We are the only local station with such a location -- one that provides information so unique we share it with local public safety agencies to improve their ability to respond.

We produce a half-hour public affairs show that airs every Friday night *in prime time* on KCPQ, our Fox affiliate. In addition to airing a great many public service announcements and telethons, we provide strong support to many charitable and nonprofit organizations. With the assistance of the Robert R. McCormick Tribune Foundation, we established "Q13 Fox Cares," a program for our local communities that since 1999 has granted over 3 million dollars. The stations and the Foundation pick up all administrative costs, so every dollar raised goes directly to help those in need in our community.

KCPQ and KMYQ compete every day with well-financed, professionally run group broadcasters, one of which also owns a 24-hour cable news channel in the market. No one from Tribune's corporate offices, and certainly no one from the *Los Angeles Times*, or the *Chicago Tribune,* tells us how cover the news. But being part of a financially strong media company means we have the financial resources to expand and improve our commitment to news in a challenging economy. It gives us the ability to convert two full-power stations to digital and HDTV that standalone stations perhaps could not afford. And it gives us access to the best programming to support the stations.

Being part of the Tribune family also gives us access to award-winning local, national and international journalism from other stations and newspapers in our group, whose efforts a station in Seattle could never afford or duplicate for our local audience.

Companies that operate newspapers and broadcast stations in the same market have been taken to task by one of our local newspapers, the *Seattle Times*. They say staff cuts at co-owned media properties are designed just to increase profits, and result in less original news coverage. No newspaper and no broadcaster has been spared the effects of competition from new media, especially the Internet. We have all had to become more efficient to survive.

A *Times* editorial columnist says the new economic model is to quote--buy a television station and a newspaper in the same market and cut staff when the two newsrooms are "smooched together." My own experience from working at Tribune stations in Chicago and Los Angeles, where my company also owns newspapers, is that the *Times* is plain wrong. We do not combine or "smooch" our newsrooms together. Our business units often cooperate, but they are run independently to produce the best journalism. Yes, we sometimes draw on our sister publications to bring our viewers the best reporting. Thus, it was with some irony that I noticed yesterday, when checking the *Seattle Times'* website, that the first article I ran across when reading about today's public hearing was from a Washington reporter at one of KCPQ's sister publications, the *Los Angeles Times*.

Some of the proudest moments in my life have been while at work in local television. Back in 2001, moments after the shaking stopped when the Nisqually earthquake hit —I ran downstairs to see if everyone was OK. At the far end of the hallway, the outside doors burst open and the crew who had evacuated the building moments earlier as instructed — raced back into the studio and control room to get on the air immediately and tell our viewers what had just happened. No one stopped to worry about whether their own home was in danger. They were at work — local broadcasters with a job to do.

Localism is what broadcasting is all about. We urge the Commission to let us do what we do best – entertaining and informing our viewers, helping them through public disasters and contributing to the culture and diversity of the communities we are privileged to serve. Unnecessary restrictions and regulations that limit our ownership structure will only weaken our ability to play the important role in the lives of our viewers that motivates us every day. This is a responsibility we take very seriously.

Thank you.

Local 99

American Federation of Musicians • AFL - CIO / CLC

artistry
advocacy
unity

325 N.E. 20th Avenue
Portland, OR 97232
(503) 235-8791
FAX (503) 296-5775

November 9, 2007

Chairman, Commissioners, citizens,

For us, this is about radio and the simple question is,

Is radio programming more accessible, more diverse and of higher quality now than before the last round of consolidation? The obvious answer, unless you don't own a radio, is a resounding NO! Why would it would be any different this time? Even a cursory look at the incredibly negative consequences of the vertical integration and control companies like Clear Channel have gained, at the expense of quality, local programming, speaks volumes.

In Portland, we decided to take a closer look at radio. We got volunteers to listen to and document a broad mix of local commercial stations. We visited them, went through the public files, talked to programmers and managers, and came back with pretty clear evidence of problems with the state of Portland radio. What was absent was a connection to the community and its local musicians. Out of all the commercial stations in Portland, only two were giving any airplay to local artists, and it was minimal at best. This, in a region with one of the most vibrant music scenes in the US. Home to a plethora of emerging artists and indie bands, our citizens – *your* citizens – have been deprived of the pleasure of hearing their home-grown artists on radio in their own town.

We filed an informal objection for FCC license renewal against three of our local stations. None of them were playing local music. Two had no dj's, no news, weather, traffic, nothing tying them to the local community. With consolidated ownership already at detrimental levels, radio execs in distant cities are thumbing their noses at the concept of serving the public interest, convenience and necessity. I forgot, they did have public affairs programming that aired on Sunday morning at 6 am and in those instances, the same programming aired on the five other stations owned by each of the conglomerates. Obviously a cost benefit to them, but a symbolic slap in the face to fulfilling their public interest obligations. While there were numerous other "violations", in our opinion, one of the letters in particular jumped out at me. Virtually every complaint letter in the public file had been answered, except the letter from a local band asking what the procedure was for garnering airplay? No response, and when I talked to the band later, they confirmed that their request was ignored. No consideration. This is not an isolated incident. I hear it over and over from musicians with high quality recordings, bands that are touring and performing locally, nationally and internationally.

Let's talk about Payola. It's illegal, it's wrong and it's enabled by consolidation. Recall, it was the large conglomerates that were recently busted. And even though they agreed, as part of the settlement, to provide airtime for independent artists, they seem to have backed out of that agreement. Even worse, look at the attempt by Clear Channel to strip these artists of their royalties in exchange for this airplay - airplay that they agreed to provide. There was a time when local stations rallied behind local artists and celebrated when their participation and support moved these musicians to the next level of success. No more. There is a pattern here, and it's a direct result of an arrogant and disengaged media power structure cultured in the Petri dish of consolidation.

What is additionally disheartening, though, are conversations with people inside the stations. DJ's with no input on programming. Newscasters questioning their future employment because their departments are being gutted. Programming directors (PD) making their music choices based strictly on so-called "research". I had to ask one PD whether he actually listened to anything before making his programming choices –he evaded the question. And station managers that believe they are providing localism when 1 of the 6 stations they own has any local content. One out of six. Frankly, consolidation will kill radio. It's the lack of quality programming that has been the outgrowth of consolidation that is driving people away from terrestrial radio and to their ipods, webcasting and satellite radio. One of my challenges when we were researching the stations was just getting people to listen. I can't tell you how many times I heard something like, "I'd love to help, but I never listen to radio anymore because it sucks".

Of course, much of the debate here is about economics. There is only one winner under consolidation, and it's not the workers. Don't forget that every band out there is a small independent business, and they are all, always, fighting for survival. Radio, for now, is still the best outlet for a band to break out, so if they are to grow *their* businesses, they must have access.

Finally, let me come full circle here. The National Association of Broadcasters claims that there are twice as many radio stations now as compared to 30 years ago. That should mean there would be *more* access and *better* programming, but the opposite is true. Why? While there may be more stations, they are controlled by fewer owners. When 3 companies in Portland own 17 of the radio stations, over 50% of the market, and certainly a combined listenership greater than that, and popularly driven quality programming disappears, it should be clear to everyone that we are not moving in the right direction. Time and again, the people have told you that they don't believe they are being well served by this government's communications policies. It's time for you to listen to the millions of voices, the people you are supposed to serve, and not the broadcast lobbyists walking the halls of the FCC. They may have your ear, but they're our airwaves, the public airwaves, and we want them back.

Thank you much

Bruce Fife
President, AFM, Local 99

FCC Hearing
Ownership
November 9, 2007

CHAIRMAN MARTIN and members of the Commission.

My name is Jon Rand. I am the General Manager of KAYU TV in Spokane, along with stations in the Yakima/Tri-Cities, Washington DMA. We are a small privately held company.

Thanks for inviting me here today as an advocate for medium and small market TV stations-whose future depends on a closer look at how stations operate and what it is going to take for them to survive and sustain multiple editorial voices in the communities they serve.

The transition to digital has been and continues to be a costly investment for broadcasters. If you think about it, the capital intensive nature of such a transition is no cheaper in tiny markets with limited TV revenues than it is for TV stations in large markets.

With little short term upside revenue potential as a result of going digital, small market broadcasters have struggled financially with this mandated investment.

We believe strongly in the notion of keeping a healthy number of viewpoints in any given market. In order to keep a myriad of expressions alive, the industry must remain financially sound.

Please consider the Spokane television market a case study of various market forces in play that are at the heart of these deliberations over media consolidation and ownership.

The TV station I manage in Spokane is a standalone Fox affiliate. We are proud to air news seven nights a week at 10 PM affording an alternative to three 11 PM news offerings and another 10 PM news in the market.

We compete in a market with a grandfathered newspaper TV cross ownership, with a TV duopoly owned by a major broadcaster and with yet another TV station who owns seven radio stations locally.

Of the five major TV players in the Spokane, my station-KAYU is only "lone wolf" in the market. In spite of the competitive landscape in Spokane, we feel that our station operates on a reasonably level playing field.

But there is a twist to this story.

Until three and a half years ago, the station I manage produced its own 10 PM news-VERY UNPROFITABLY I might add. From a purely financial perspective, it made absolutely no sense to have the station continue to pour money into news

The solution for us was to reach an agreement with one of our competitors to produce a nightly newscast--one that was different than their successful news product, but that targeted a younger audience that Fox prime would deliver at 10 PM.

I am happy to report these forty two months later that KAYU's news has not only survived, but risen to a level of market leadership in Spokane.

Research conducted earlier in 2007 revealed an interesting phenomenon:

One of the questions posed for survey respondents asked:

Which station offers local news you can't get elsewhere in the market?

In spite of the fact that this NBC affiliate produces our news, a majority of viewers believe that the newscast on my station fits this description far more aptly than any station in the market. From our perspective, that's MISSION ACCOMPLISHED.

I must add that there is clearly NO editorial connection between this NBC affiliate and the daily newspaper their company publishes. NONE. In fact it would appear to an outsider that they are frequently at editorial odds with each other.

Spokane should paint an interesting picture to study for those who express concerns about media consolidation and loss of voice. Issues with that certainly are not present in the market. But in our case, it was fiscally necessary to step away from the traditional model in order to sustain a news product on our station.

Medium and small market TV stations NEED relief from outdated ownership regulation. In order to remain viable and keep multiple voices alive, the FCC and Congress are going to have to grant relief to broadcast ownership.

The FCC should relax unreasonable ownership restrictions for small market TV broadcasters. The shifting media landscape, including alternate sources of news that may not have existed in broad form ten years ago now warrant steps that can insure the vitality of the broadcast television industry going forward.

There is nothing either illegal or immoral about broadcasters making a modest profit. And broadcasters work hard to serve the public interest through their community service efforts, their local public affairs programming and sports, their expanding internet presence and their devotion to local news.

Chairman Martin, I thank you and the members of the Commission for letting me share these views today.

Screen Actors Guild

REMARKS OF ABBY DYLAN

Screen Actors Guild
SAG National Board of Directors
Chair, SAG Regional Branch Division Legislative Committee

FEDERAL COMMUNICATIONS COMMISSION
PUBLIC HEARING ON MEDIA OWNERSHIP

Seattle, Washington

November 9, 2007

Chairman Martin and Commissioners, good afternoon and thank you for holding this important discussion today. I am here today on behalf of Screen Actors Guild, representing over 120,000 actors nationwide who work in motion pictures, commercials, television programs and all other new media platforms. We are a proud affiliate of the AFL-CIO.

I am on the National Board of Directors of Screen Actors Guild, I'm an actor and I live and work in Seattle. Some of my fellow SAG members have testified before the Commission at previous media ownership hearings in Los Angeles, Nashville and Tampa on the importance of independently produced content in primetime television.

Screen Actors Guild recently filed comments with the Commission, along with a broad range of entertainment unions and independent producer organizations, including AFTRA, PGA, and The Caucus of Producers, Writers & Directors.

My testimony today focuses on vertical concentration in the television and motion picture industry, and the fact that the overwhelming majority of the shows Americans see on broadcast television are not created by independent producers with a variety of viewpoints, but by the networks. The sellers are the buyers, and we believe this has created a lack of diverse, innovative programming on our airwaves. Some of the best television of all time was created by independent producers. Norman Lear brought us new and interesting television with characters and plots that were provocative…and popular. There are hundreds of examples of the contributions of independently created programming. But those days are gone.

In 1993, more than two-thirds of the shows on broadcast primetime television were created by truly independent producers. According to the FCC's own study released this August, this total for the 2007 season is only 12%. The number of independent producers not affiliated with one of the four major networks that provide shows on broadcast networks has declined from 23 in 1993 to two today—Sony and Warner Bros. We believe this compels corrective regulatory action by the Commission.

The unparalleled consolidation of broadcast networks including their corporate siblings, cable networks and and movie studios has given them unfettered control over the primetime airwaves, which they utilize to exploit their market power by either excluding rival programming or by forcing independent producers to forego syndication revenues in exchange for carriage. This vertically integrated dominance over both content and distribution has resulted in a disturbing contraction in the diversity of viewpoints to which the public is exposed via primetime broadcast television programming.

The networks have demonstrated that if left unchecked, they will concentrate more and more programming power in fewer and fewer hands, thereby decreasing the diversity of opinions and points of view available to the US viewers of over-the-air broadcasting.

As members of the creative community, who make our livings in this industry we are being damaged by the decrease in the sources of programming content and the diversity of employment opportunities. Key threads in America's cultural fabric are also being damaged.

You, as Commissioners of the FCC, are charged with a mandate to increase diversity and maintain a free marketplace of ideas. The networks have demonstrated that they will do neither if left to their own devices.

We ask that the Commission adopt our 25% independent programming minimum for primetime network programming hours. We believe that by doing so the FCC will once again be fulfilling its mandate to the American people to ensure diversity in voices on our nation's broadcast airwaves.

On behalf of Screen Actors Guild, I thank you for the opportunity to speak before you today. I hope you enjoy your stay in our extraordinary city.

Rob McKenna
ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

November 9, 2007

Commissioner Kevin Martin, Chair
Commissioner Deborah Tate
Commissioner Robert McDowell
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Federal Communications Commission
445-12th Street SW
Washington, DC 20554

Dear Commissioners:

Thank you for the opportunity to testify before the Federal Communications Commission regarding media consolidation. As Attorney General for the State of Washington, I have a keen interest in competition and a fair and open marketplace. I am also a strong believer in the First Amendment and the importance of robust and diverse media in our democratic society. With this in mind, I have a number of concerns about this hearings process and the underlying policy proposals. I understand I am not alone in these concerns.

The Process

A. The Further Notice of Proposed Rule-Making is arguably improper. It does not clearly set forth specific rules, but outlines the history of the prior rules and asks a series of questions regarding what steps should be taken next. Rather than pose specific questions designed to determine the facts, the questions are generally philosophical. Therefore, it is extremely difficult for consumers to assess exactly what the FCC is proposing. I am concerned that any rules that come out of this process will be challenged in court again—and likely successfully.

B. The Seattle hearing itself was announced with very little warning. While there were rumors of a potential hearing, they were vague at best. Sen. Maria Cantwell and Rep. Jay Inslee were correct in asking for at least one month's time so that testimony could be adequately prepared in an informed manner. Yesterday, Sens. Byron Dorgan, D-N.D., and Trent Lott, R-Miss. proposed the Media Ownership Act of 2007, which would require the localism study be completed, formal policies be proposed and the public be given 90 days to comment, before other media-ownership issues are considered.[1] I agree with that proposal.

[1] See November 9, 2007 Seattle Times editorial "FCC in Seattle: Time to Listen".

C. The hearings have been segregated into separate topics. The Commission should have invited input on all topics because the issues of local ownership and media consolidation are intertwined and cannot be segregated. In its holding, the *Prometheus* court explained how issues of localism and cross ownership intertwine. Part of the FCC's justification for lifting the ban on cross-ownership was that the ban might actually undermine localism. It claimed it had evidence indicating that:

1) newspaper-owned broadcast stations (grandfathered by the rule) were producing higher quantity and quality of local news;
2) commonly owned newspapers and broadcast stations do not necessarily speak with a single voice; and
3) there are diverse viewpoints from other media sources in local markets (cable, internet) to compensate for lost viewpoints due to newspaper/broadcast combinations.

Based on this, the Court asked that localism and cross-ownership be considered together so that the FCC's arguments can be explored. Continuing to segregate the topics prevents that from happening.

<u>**Media Consolidation**</u>

A. Changing the cross-media limits may have an impact on local ownership, which may reduce the amount of local news available: Driving the point home further that localism and cross-ownership are intertwined, and contrary to what the FCC studies apparently found, the group Reclaim the Media cites the following statistics:

• Locally owned broadcast companies devote, on average, an additional 20 to 25 percent of their newscasts to local news stories - approximately five more minutes per half hour broadcast than nationally owned stations.

• When ownership is transferred from a local family to a national chain, local issues get less coverage.

• Newsrooms owned by big chains rely more on syndicated feeds and are more likely to air national stories with no local connection.

Furthermore, Derek Turner, research director of Free Press, a media-overhaul group, said its analysis of FCC data found markets where companies had waivers to own newspapers and TV stations had less local news than markets that didn't.[2]

B. More *complete*, rigorously peer-reviewed and corrected economic studies are needed, especially if such studies are going to be relied upon to allow a loss of business competition: From an antitrust enforcement standpoint, the Attorney General's Office is concerned that lifting the ban on cross-ownership will result in market power far above anything allowed under antitrust laws.

Allowing unchecked acquisitions could concentrate market power into too few competitors. The FCC claims that it has conducted 10 studies in this area, yet critics say those

[2] See November 1, 2007 Seattle Times "Media Ownership Action May Stall"

studies are biased and flawed. The disagreement between what the FCC is saying and what groups such as Consumers Union, Reclaim the Media and Free Press are saying about the economic literature indicates that there is room for more complete study.

Additionally, the lack of competition in the media could adversely impact small businesses. Small, local businesses need to be able to advertise via local media outlets such as radio. If national conglomerates own both national and local stations, and prefer to do business with national advertisers, or their own related companies, will small local businesses still be able to buy advertising time at a reasonable cost?

C. The FCC should use standard antitrust analysis: The Third Circuit repeatedly instructed the FCC to use the DOJ/FTC enforcement guidelines to measure market power and industry concentration. The Third Circuit repeatedly told the FCC to use real world data such as actual market share, instead of inadequate proxies. As directed by the courts, the FCC should use the standard measures of market share used by the DOJ and FTC to measure markets and should analyze the markets in the same way.

D. More complete studies should be conducted to assess the impact of the new rules on current and potential minority and small business owners: Ironically, while the FCC has expressed concern about maintaining viable ownership by women and minorities, their new rules allowing huge conglomerates to capitalize expansion into cross-ownership makes it impossible for small businesses, especially those owned by women and minorities, to compete for those licenses. The Third Circuit made note of this in the *Prometheus* decision. Cmmr. Copps says that people of color make up 30 percent of our population, yet own only 4.2 percent of our radio stations and 1.5 percent of our TV stations. Here in Washington we have a growing minority community and would like to protect those communities' ability to compete for licenses against huge conglomerates.

Clearly, there are many thorny issues the Commission must address before moving forward in this rule-making process. I respect your position and the difficult balancing act you face in protecting access to the media while ensuring a competitive marketplace. That is why it is all the more important that you provide complete, trusted, independent and peer-reviewed analysis of these issues—and why it is vital all interested parties have adequate time to read this analysis, review your proposals and provide informed input before any changes to FCC rules are adopted.

Sincerely,

Rob McKenna

ROB MCKENNA
Attorney General

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